

# Software Industry Coalition

2369 Gianera Street, Santa Clara, CA 95054-1322  
Phone: (408) 980-8294 FAX: (408) 980-8295

**Policy Project**  
Phone: (408) 479-8743 Fax: (408) 479-9247

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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RE: RM no. 8775

This letter is filed in response to your request for comments on the ACTA petition relating to "Internet Phone" software.

The Software Industry Coalition consists of several of the software industry's leading edge companies. Collectively our members have over 126,000 employees and world-wide revenues of over \$36 billion.

With regard to ACTA's specific claims, the Coalition disagrees with several of their contentions:

- 1.) ACTA claims that the provision of software for "Internet Phone" applications constitutes "telecommunications" under the definition of telecommunications in the "Telecommunications Act of 1996", which defines telecommunications as follows:

the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Like many other types of software, "Internet Phone" software merely takes specific information, in this case audio information, and modifies the form of that information into data which can be transmitted via the Internet. Indeed it is the express purpose of the software to change the information from one form to another. Changing the form of information into a telecommunicatable format clearly does not constitute telecommunications. Indeed the definition of telecommunications specifies that the form NOT be changed. Furthermore, such software does NOT itself transmit the information but merely packages it appropriately so that it may be transferred by Internet services providers and by the underlying telecommunications carriers. The form modification and packaging of the information take place prior to and subsequent to the telecommunications itself. To claim that any software which packaged information for telecommunications and which then initiated the sending or receiving of that information constituted transmission itself would mean that all software which interfaced to the Internet constituted "telecommunications". This is clearly not the case.

- 2.) Given that the software in question does not constitute "telecommunications", the software provider does not constitute a "telecommunications carrier".
- 3.) ACTA's attempt to draw parallels between cable TV and the Internet falls short. Cable TV is a closed proprietary one-way system. The Internet is completely open and highly competitive. Drawing parallels between the two is inappropriate. Furthermore, as FCC Chairman Hundt indicated in his article *Toward Regulation That Fosters Competition* (Federal Communications

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Law Journal, Vol . 47 #2) early concerns about the cable industry focused on protecting them from competition - the exact opposite of the treatment ACTA proposes for the "Internet Phone" companies. Later concerns with the cable industry focused on concern over the monopoly position of providers in their market areas - yet another example which certainly does not hold true for "Internet Phone" providers - note ACTA's listing of several providers in this newly created market. To regulate the Internet simply because of the innovativeness of new uses of it is entirely inappropriate.

- 4.) We completely disagree that for the FCC to take the action on ACTA requests would "best protect the public interest". On the contrary, the requested actions would best protect ACTA's interests, by excluding without merit Acta's potential competitors. The public is always protected by healthy competition.
- 5.) Concerning the ACTA claim that "Internet Phone" products should be prohibited simply because they might be used for illegal purposes, if such reasoning were followed in other areas we would have to prohibit not only all weapons, but also cars, mail and telephones themselves. Surely ACTA does not and cannot claim that the telecommunications services provided by their members have never been used for any illegal purposes.

The Software Industry Coalition urges the FCC to reject ACTA's petition for the following reasons:

- 1.) Software providers are not telecommunications carriers.

Many different kinds of software have been developed to interface with the Internet and to provide various types of services using the basic facilities of the Internet. As such the software merely provides enhanced services which rely on the provision of telecommunications services from telecommunications carriers. The mere provision of products which makes things telecommunicatable does not convert the provider of those products into a "telecommunications carrier". The software itself does not carry out the actual transmission and thus the software vendors do not in any sense "carry" telecommunications.

- 2.) Prohibiting the use of Internet voice services in the U.S. would place U.S. companies at a competitive disadvantage.

Companies compete on a global basis. To prohibit their use of less expensive means to communicate while non-U.S. companies are free to use less expensive communications would place an unjustified burden on U.S. companies. Such policies would significantly aid the development of non-U.S. businesses. Many new types of businesses would simply be required to locate outside the U.S. in order to remain competitive.

- 3.) Requiring software companies to stop providing such products is not in the best interests of the U.S. economy.

The Internet is a globally available facility. To order U.S. companies to withdraw from the "Internet Phone" marketplace would only to serve to damage the economic interests of the U.S. software industry. Software with similar abilities could simply be acquired from non-U.S. companies. Given the use of the Internet itself as a delivery mechanism, acquisition of non-U.S. software is a trivial task. The Internet communications products marketplace is one of the fastest growing segments of the U.S. economy. To overregulate it simply to prevent competition would be contrary to fundamental U.S. policies and damaging to U.S. interests in the global marketplace.

4.) Regulating types of data would be a difficult, if not impossible, task.

Regulating Internet traffic based on the type of data included in data packets would be technically challenging if not impossible, and is certainly economically unfeasible. Regulations requiring any service provider or service user to determine the type of data being transmitted through their facilities would be impossible to comply with.

Finally, the Coalition would like to point out that new technologies are constantly being developed. Undue regulation would only serve to chill the development of new technologies. To prohibit their use merely based on the fact that they are less expensive than existing technologies and therefore threaten the economic power of companies providing those existing technologies, would be contrary to the basic principles of this country.

In closing, the Coalition would like to remind you of FCC Chairman Reed Hundt's comments on the recently enacted telecommunications legislation (see the FCC web page at:  
<http://www.fcc.gov/chairman.html>):

"The new law is based on competition. The goal is to let anyone enter any communications business -- to let any communications business compete in any market against any other. In the communications field, to paraphrase the President, the era of big government is over -- at least the era of big government management of state-supported monopolies is over. Competition can bring more choices, better quality services, and lower prices."

The Coalition urges you to reject the ACTA petition in its entirety.

Sincerely,

A handwritten signature in black ink that reads "Kaye K. Caldwell". The signature is written in a cursive, flowing style.

Kaye K. Caldwell  
Policy Project Director